



# GENERAL ASSEMBLY

## COMMONWEALTH OF KENTUCKY

### 2012 REGULAR SESSION

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HOUSE BILL NO. 409

AS ENACTED

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THURSDAY, MARCH 29, 2012

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RECEIVED AND FILED  
DATE April 11, 2012  
4:10 p.m.  
ALISON LUNDERGAN GRIMES  
SECRETARY OF STATE  
COMMONWEALTH OF KENTUCKY  
BY Mary Sue Helms

1 AN ACT relating to the disposition of real property.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔Section 1. KRS 381.280 is amended to read as follows:

- 4 (1) If the husband, wife, heir-at-law, beneficiary under a will, joint tenant with the right  
5 of survivorship or the beneficiary under any insurance policy takes the life of the  
6 decedent or victimizes the decedent by the commission of any felony under KRS  
7 Chapter 209 and in either circumstance is convicted therefor, the person so  
8 convicted forfeits all interest in and to the property of the decedent, including any  
9 interest he or she would receive as surviving joint tenant, and the property interest  
10 or insurable interest so forfeited descends to the decedent's other heirs-at-law,  
11 beneficiaries, or joint tenants, unless otherwise disposed of by the decedent. A judge  
12 sentencing a person for a offense that triggers a forfeiture under this section shall  
13 inform the defendant of the provisions of this section at sentencing.
- 14 (2) A forfeiture under subsection (1) of this section:
- 15 (a) Shall not apply in cases involving the commission of any felony under KRS  
16 Chapter 209 where the will, deed, or insurance policy was executed prior to  
17 January 1, 2012;
- 18 (b) Shall not apply in cases where the decedent, with knowledge of the person's  
19 disqualification, reaffirmed the right of the husband, wife, heir-at-law,  
20 beneficiary under a will, joint tenant with the right of survivorship, or  
21 insurance policy beneficiary to receive the property by executing a new or  
22 modified will or codicil, insurance policy or policy modification, or deed; and
- 23 (c) Shall not apply in cases of a felony under KRS Chapter 209 committed prior  
24 to January 1, 2012.
- 25 (3) If, after the provisions of this section are applied, there are no other heirs-at-law,  
26 beneficiaries, or joint tenants of the decedent as to all or part of the interest  
27 forfeited, the forfeited interest shall escheat to the state under KRS Chapter 393.

1 The Department of the Treasury shall, after liquidation of the interest, pay the  
 2 proceeds into the elder and vulnerable adult victims trust fund established in KRS  
 3 41.305.

4 ~~[(4) Legal, real estate, and insurance professionals shall make reasonable efforts to~~  
 5 ~~advise their clients of the provisions of this section prior to the execution of~~  
 6 ~~documents affected by the provisions of this section.]~~

7 ➔Section 2. KRS 286.8-020 is amended to read as follows:

8 (1) The following mortgage loan companies and mortgage loan brokers shall be subject  
 9 to KRS 286.8-046, 286.8-180, 286.8-220(1), and subsections (12), (13), and (14) of  
 10 this section, but shall be exempt from all other provisions of this subtitle:

11 (a) Any person duly licensed, chartered, and otherwise subject to regular  
 12 examination at least once every two (2) years by a state or federal financial  
 13 institution regulatory agency under the laws of this state or any other state or  
 14 the United States as a bank, bank holding company, trust company, credit  
 15 union, savings and loan association, savings and loan association holding  
 16 company, service corporation subsidiary of a savings and loan association,  
 17 insurance company, real estate investment trust as defined in 26 U.S.C. sec.  
 18 856, an institution of the farm credit system organized under the Farm Credit  
 19 Act of 1971 as amended, or any wholly owned subsidiary of any such person  
 20 if the subsidiary is subject to regular examination at least once every two (2)  
 21 years by a state or federal financial institution regulatory agency;

22 (b) Any natural person who makes a mortgage loan secured by a dwelling that  
 23 served as the natural person's residence, unless the natural person is  
 24 compensated in connection with that transaction by a mortgage loan company,  
 25 mortgage loan broker, or other mortgage loan originator, or by an agent of  
 26 such company, broker, or other originator;

27 (c) Any natural person who makes a mortgage loan to an immediate family

1 member of the natural person unless the natural person is compensated in  
 2 connection with that transaction by a mortgage loan company, mortgage loan  
 3 broker, or other mortgage loan originator, or by an agent of such company,  
 4 broker, or other originator;

5 (d) Any person other than a natural person, including any affiliate of that  
 6 person, that makes in the aggregate no more than four (4) mortgage loans  
 7 within a calendar year with its own funds and secured by residential real  
 8 property owned by the person making the mortgage loan, provided that the  
 9 mortgage loan is made without the intent to resell the mortgage loan, and  
 10 provided that the person does not hold itself out to the public as being  
 11 primarily in the mortgage loan business;

12 (e) The United States of America; the Commonwealth of Kentucky; any other  
 13 state, district, territory, commonwealth, or possession of the United States of  
 14 America; any city, county, or other political subdivision; and any agency,  
 15 division, or corporate instrumentality of any of the foregoing;

16 (f)(e) The Federal National Mortgage Association (FNMA), the Federal Home  
 17 Loan Mortgage Corporation (FHLMC), and the Government National  
 18 Mortgage Association (GNMA);

19 (g)(f) Any mortgage loan company or mortgage loan broker making or  
 20 brokering a mortgage loan involving housing initially transferred by certificate  
 21 of title under KRS Chapter 186A;

22 (h)(g) A consumer loan or finance company or an industrial loan company  
 23 licensed under Subtitle 4 or 7 of this chapter whose primary business is  
 24 originating consumer or industrial loans as provided under Subtitle 4 or 7 of  
 25 this chapter or any wholly owned subsidiary of such a consumer loan or  
 26 finance company or an industrial loan company, except that they shall be  
 27 subject to the prohibited acts of KRS 286.8-220(2)(e) and (f) and 286.8-

1 110(4); and

2 ~~(i)(h)}~~ A nonprofit organization that is recognized as tax-exempt under 26  
 3 U.S.C. sec. 501(c)(3) and authorized to do business in this Commonwealth,  
 4 and that has affordable housing as a primary purpose in its operations.

5 (2) The following shall be exempt from the licensing provisions of this subtitle and the  
 6 examination provisions of KRS 286.8-170 and 286.8-180, unless it appears on  
 7 grounds satisfactory to the commissioner that an examination is necessary, but shall  
 8 otherwise be subject to all other provisions of this subtitle:

9 (a) A mortgage loan company or mortgage loan broker approved and regulated by  
 10 the United States Department of Housing and Urban Development to perform  
 11 business in this Commonwealth; and

12 (b) Any branch of a mortgage loan company or mortgage loan broker listed in  
 13 paragraph (a) of this subsection, provided the branch is approved and  
 14 regulated by the United States Department of Housing and Urban  
 15 Development to perform business in this Commonwealth.

16 (3) Any nonprofit organization, mortgage loan company, mortgage loan broker, or  
 17 branch thereof relying upon an exemption under subsection (1)~~(i)(h)}~~ or (2)(a) or  
 18 (b) of this section shall file with the commissioner a written application for a claim  
 19 of exemption. The commissioner shall approve an application for an exemption that  
 20 is timely filed and meets the requirements of this subtitle. The period of exemption  
 21 shall be from January 1 through December 31, and the exemption shall expire on  
 22 December 31 of the same calendar year. Every person granted an exemption under  
 23 this section shall file a written application for a new exemption on an annual basis.  
 24 The application shall be received by the commissioner on or before December 31 of  
 25 the same calendar year. A written application for a partial-year exemption shall also  
 26 expire on December 31 of the same calendar year that the written application for an  
 27 exemption is granted.

1 (4) Any mortgage loan company, mortgage loan broker, or branch thereof relying upon  
 2 an exemption under subsection (2)(a) or (b) of this section shall fund or broker a  
 3 minimum of twelve (12) Federal Housing Administration-insured loans on  
 4 Kentucky residential real properties each year in order to maintain its exemption.

5 (5) Any mortgage loan company, mortgage loan broker, or branch thereof relying upon  
 6 an exemption under subsection (2)(a) or (b) of this section who ceases to be  
 7 approved or regulated by the Department of Housing and Urban Development shall  
 8 notify the commissioner, in writing, within ten (10) days after it ceases to be  
 9 regulated by the United States Department of Housing and Urban Development.

10 (6) Any person listed in subsection (1)(a), (b), (c), (d), (e), (f), ~~(g)~~, or (h) of this  
 11 section shall not be required to file with the commissioner a claim of exemption.

12 (7) (a) Any natural person making a loan under subsection (10) of this section shall  
 13 make the following disclosure, on a separate sheet of paper in minimum  
 14 eighteen (18) point type, to the borrower:

15 DISCLOSURE

16 (Name and address of lender) is not licensed or regulated by the Kentucky  
 17 Department of Financial Institutions.

18 (Name of lender) is making this mortgage loan with his or her own funds, for  
 19 the person's own investment, without intent to resell the mortgage loan.

20 (The phone number and address of the Kentucky Department of Financial  
 21 Institutions.)

22 (b) A copy of the disclosure, signed by the borrower, shall be maintained by the  
 23 natural person for a period not to exceed three (3) years after the date the  
 24 mortgage loan is paid in full.

25 (8) Any mortgage loan company, mortgage loan broker, or branch thereof relying upon  
 26 an exemption under subsection (2)(a) or (b) of this section shall provide a list of  
 27 funded or brokered Federal Housing Administration-insured loans from December 1

1 of the previous calendar year to November 30 of the current calendar year to the  
2 commissioner by December 31 of each year on a form prescribed by the  
3 commissioner.

4 (9) Any mortgage loan company, mortgage loan broker, or branch thereof applying for  
5 an exemption under subsection (2)(a) or (b) of this section shall not be approved for  
6 an exemption under subsection (2)(a) or (b) of this section unless the mortgage loan  
7 company, mortgage loan broker, or branch thereof has:

8 (a) Held a mortgage loan company or mortgage loan broker license or registration  
9 for five (5) consecutive years prior to the filing of the application for an  
10 exemption under this section with the commissioner; or

11 (b) Been approved and regulated by the United States Housing and Urban  
12 Development to conduct business in the mortgage lending process for five (5)  
13 consecutive years prior to the filing of the application for an exemption under  
14 this section with the commissioner.

15 (10) Any natural person not exempted in subsection (1)(b) or (c) of this section who  
16 makes a mortgage loan with his or her own funds for the person's investment  
17 without the intent to resell the mortgage loan shall be exempt from the provisions of  
18 this subtitle except for the following:

19 (a) Examination provisions of KRS 286.8-170 and 286.8-180 when it appears on  
20 grounds satisfactory to the commissioner that an examination is necessary;

21 (b) Disclosure requirements of subsection (7) of this section;

22 (c) Any investigation and enforcement provisions of this subtitle including KRS  
23 286.8-170(6), and KRS 286.8-046, 286.8-090, 286.8-190, and 286.8-990;

24 (d) Prohibited acts under KRS 286.8-125 and 286.8-220; and

25 (e) Registration and regulatory requirements of KRS 286.8-255.

26 (11) No person shall hold both a claim of exemption and a license granted under this  
27 subtitle.

1 (12) Notwithstanding any provisions to the contrary set forth in this subtitle, every  
 2 mortgage loan company and mortgage loan broker shall make available and grant  
 3 access to the commissioner or an examiner of the commissioner the records in its  
 4 possession or control that are subject to the provisions of this subtitle.

5 (13) Notwithstanding any provisions to the contrary set forth in this subtitle, no  
 6 mortgage loan company or mortgage loan broker shall impede the commissioner or  
 7 an examiner of the commissioner from interviewing any person regarding any  
 8 potential violations of this subtitle.

9 (14) Notwithstanding any provisions to the contrary set forth in this subtitle, every  
 10 mortgage loan company and mortgage loan broker that employs or utilizes the direct  
 11 services of a mortgage loan originator subject to the registration and regulatory  
 12 requirements of KRS 286.8-255 shall complete and timely submit to the  
 13 Nationwide Mortgage Licensing System and Registry an annual report of condition,  
 14 which shall be in such form and contain such information as the Nationwide  
 15 Mortgage Licensing System and Registry may require, along with any other  
 16 information which may be required by the commissioner.

17 ➔Section 3. KRS 286.8-290 is amended to read as follows:

18 (1) The following mortgage loan originators shall be subject to subsections (3) and (4)  
 19 of this section, but shall be exempt from the registration and regulatory  
 20 requirements of KRS 286.8-255:

21 (a) An individual employed by the following institutions and acting on behalf of  
 22 such institutions:

- 23 1. A depository institution;
- 24 2. A subsidiary that is:
  - 25 a. Owned and controlled by a depository institution; and
  - 26 b. Regulated by the Board of Governors of the Federal Reserve
  - 27 System, the Comptroller of the Currency, the Director of the



1 Office of Thrift Supervision, the National Credit Union  
 2 Administration, or the Federal Deposit Insurance Corporation; or

3 3. An institution regulated by the Farm Credit Administration;

4 (b) A licensed attorney who negotiates the terms of a mortgage loan on behalf of a  
 5 client as an ancillary matter to the attorney's representation of the client,  
 6 unless the attorney is compensated by a mortgage loan company, mortgage  
 7 loan broker, or other mortgage loan originator, or by an agent of such  
 8 company, broker, or other originator;

9 (c) A natural person who originates a mortgage loan on behalf of an immediate  
 10 family member of the natural person unless the natural person is compensated  
 11 in connection with that transaction by a mortgage loan company, mortgage  
 12 loan broker, or other mortgage loan originator, or by an agent of such  
 13 company, broker, or other originator;

14 (d) A natural person who originates a mortgage loan secured by a dwelling that  
 15 served as the natural person's residence unless the natural person is  
 16 compensated in connection with that transaction by a mortgage loan company,  
 17 mortgage loan broker, or other mortgage loan originator, or by an agent of  
 18 such company, broker, or other originator;[and]

19 (e) Any natural person including all entities owned in whole or part by that  
 20 natural person that make no more than four (4) loans each calendar year;  
 21 and

22 (f) A person who originates a mortgage loan secured by a dwelling; and

23 1. Who is exempted by an order of the commissioner; and  
 24 2. Whose exemption would not be contrary to the registration requirements  
 25 of the S.A.F.E. Mortgage Licensing Act, Pub. L. No. 110-289, and  
 26 amendments thereto.

27 (2) The following mortgage loan processors shall be subject to subsections (3) and (4)

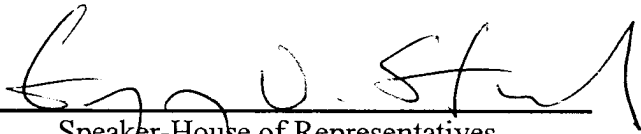
1 of this section, but shall be exempt from the registration and regulatory  
2 requirements of KRS 286.8-255:


3 (a) Any natural person exempted in subsection (1) of this section; and

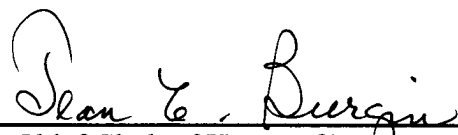
4 (b) Any natural person employed by a person exempted in KRS 286.8-020(1)(a),  
5 (b), (c), (d), (e), (f),~~(g)~~ (g), or (h) and acting on behalf of such person.

6 (3) Notwithstanding any provisions to the contrary set forth in this subtitle, no  
7 mortgage loan originator or mortgage loan processor shall impede the commissioner  
8 or an examiner of the commissioner from interviewing any person regarding any  
9 potential violations of this subtitle.

10 (4) Notwithstanding any provisions to the contrary set forth in this subtitle, every  
11 mortgage loan originator and mortgage loan processor shall make available and  
12 grant access to the commissioner or an examiner of the commissioner the records in  
13 the originator's or processor's possession or control that are subject to the provisions  
14 of this subtitle.

  
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Speaker-House of Representatives

  
\_\_\_\_\_  
President of Senate

Attest:   
\_\_\_\_\_  
Chief Clerk of House of Representatives

Approved   
\_\_\_\_\_  
Governor

Date 4-11-12